

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.822 of 2007

Dharani

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The Commissioner of Police
Greater Chennai, Egmore
Chennai - 600 008.
3. The Inspector of Police (Law & Order)
Rajamangalam Police Station
Villivakkam, Chennai-600 049.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.C.Jayaprakash
For Respondents : Mr.P.Kumaresan
Addl. Public Prosecutor

सत्यमेव जयते
O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Siva alias Sivakumar, husband of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of

habeas corpus to call for the records leading to the detention of the detenu under Act 14 of 1982 vide detention order dated 22.11.2006 on the file of the second respondent herein made in proceedings No.294 of 1006, to quash the same as illegal and to consequently direct the respondents herein to produce the detenu before this Court and to set him at liberty from the Central Prison, Puzhal, Chennai.

3. The order of detention dated 22.11.2006 came to be passed based on the ground case said to have taken place on 9.11.2006 at about 9.30 Hrs. It is alleged that when one Kannan was attending his business of mobile canteen, the detenu came there and took tiffin and when Kannan asked him to remit the amount, he refused to pay and further kicked the mobile cart, whereby all the eatables kept in the said cart fell down and got damaged. When Kannan raised hue and cry, the detenu took out a knife and threatened him at the point of knife and voluntarily inserted his hand into the shirt pocket of Kannan and took away Rs.120/-. Noticing the rushing of public, who came to the rescue of Kannan, the detenu threatened to kill them. He picked up soda water bottles from the nearby shop and hurled the same against them. The bottles fell on the roadside and broke into pieces. The public ran hither and thither for safer places out of fear of danger to their lives and properties. The traffic was disrupted. Kannan along with the public, however, surrounded the detenu and apprehended him and took him to V4, Rajamangalam Police Station. Based on the complaint of Kannan, a case was registered in Crime No.632 of 2006 under Sections 341, 392 read with 397, 427, 336 and 506(2) IPC.

4. The second respondent, taking note of the above case as a ground case and finding that there are four adverse cases pending against the detenu, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

5. Heard Mr.C.Jayaprakash, learned counsel for the petitioner and Mr.P.Kumaresan, learned Additional Public Prosecutor for the respondents. We have perused the materials available on record.

6. In the English version of the grounds of detention, it is stated in Paragraph (4) as under:

"4. I am aware that Thiru Siva @ Sivakumar is in remand in V.4 Rajamangalam Police Station Crime No.632/2006 and he has not moved any bail application so far. I am also aware that a bail application was filed before the Principal Sessions Court, Chennai in CrI.M.P.No.9906/2006 for V4 Rajamangalam Police Station Crime No.632/2006 and the same is pending."

7. Apparently, there is a contradiction between the first limb and second limb of paragraph (4) referred to above. In the first limb it is stated that the detenu has not moved any bail application so far, but in

the second limb it is stated he has filed a bail application before the Principal Sessions Court, Chennai in CrI.M.P.No.9906/2006 for V4 Rajamangalam Police Station Crime No.632/2006 and the same is pending.

8. That apart, in the vernacular translation of the grounds of detention, in paragraph (4), it is stated as under:

ஞதிருசிவா (எ) சிவகுமார் என்பவர் வி.4 ராஜமங்கலம் காவல் நிலைய குற்ற எண்.632/2006 வழக்கில் காவலில் உள்ளார் என்பதையும் அவர் ஜாமீன் கோரும் மனு ஒன்றை வி-4 ராஜமங்கலம் காவல் நிலைய குற்ற எண்.632/2006 வழக்கில் சென்னை, முதன்மை அமர்வு நீதிமன்றம் முன்பாக குற்றப் பல்வகை மனு எண்.9906/2006ல் தாக்கல் செய்து அது நிலுவையில் உள்ளது என்பதையும் நான் நன்கு அறிவேன்.

Thereby, the sentence that the detenu has not moved any bail application so far itself has been not translated.

9. In view of the above contradictions in the grounds of detention and the omission in the vernacular translated version, the detenu was not able to make an effective representation. The order of detention is therefore vitiated. This petition must succeed and the same is ordered as prayed for. The detention order dated 22.11.2006 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

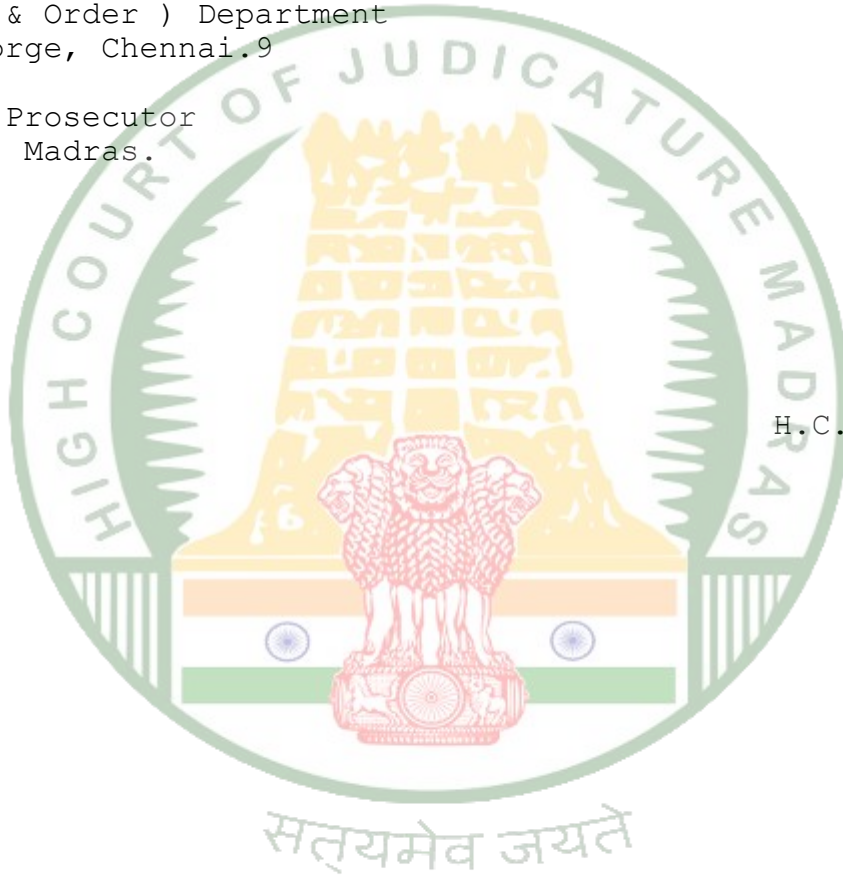
sasi

To:

1. The Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai - 9.
2. The Commissioner of Police
Greater Chennai, Egmore
Chennai - 600 008.

3. The Inspector of Police (Law & Order)
Rajamangalam Police Station
Villivakkam, Chennai-600 049.
4. The Superintendent
Central Prison, Puzhal,
Chennai
5. The Joint Secretary to Government
Public (Law & Order) Department
Fort st, George, Chennai.9
6. The Public Prosecutor
High Court, Madras.

DM(CO)
RD 8.10.07



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